

Section 2.01. Title Change on Certain Mode Changes.

Whenever the Mode of a Variable Rate Security is changed to the Modal Fixed Rate Mode or the Auction Rate Mode, the title of the resulting Series 2003 Security shall include "(Modal Fixed Rate)" or "(ARCs)", as the case may be, in substitution for "(Variable Rate Demand)".

Section 2.02. Changes in Connection with Mode Change.

(a) Any Mode Change Notice delivered to change the Mode of some or all Variable Rate Securities of a Series also may provide for:

(1) adding, deleting or otherwise modifying maturity dates of such Securities so long as any additional maturity date is a July 1 occurring no later than the first to occur of (A) a July 1 occurring no more than 35 years after the Closing Date and (B) the maximum maturity date permitted by the Bond Resolution.

(2) adding, deleting or otherwise modifying the principal of such Securities maturing on any maturity date so long as the entire principal amount authorized hereunder is amortized no later than the last maturity date;

(3) adding or deleting any of such Securities as Term Securities and adding, deleting or otherwise modifying Sinking Fund Installments for any such Term Securities;

(4) adding or deleting or otherwise modifying the terms hereof for optional redemption of such Securities as Modal Fixed Rate Securities and the Redemption Prices thereof; and

(5) increasing or decreasing the Stated Maximum Rate of any of such Securities.

(b) The change described in such notice shall be effective when, but only when, the change to the Mode change contemplated by such notice becomes effective and only if:

(1) any change in maturity does not exceed any limitation on maturity contained in the Act;

(2) any increase in interest rate does not exceed the Legal Maximum Rate;

(3) such Variable Rate Securities could be issued as Series 2003 Securities of the corresponding Parity and for the corresponding purpose under the Bond Ordinance (treating, for such purpose, the Securities with the amortization to be adjusted as no longer outstanding to the extent of the adjustment) and

(4) the Credit Enhancement Provider and the Liquidity Facility Provider for the Modal Securities have consented to the changes contained in such Mode Change Notice.

Section 2.03. Interest.

Interest on each Modal Security shall be:

(a) payable at the rate determined on each Rate Determination Date for such Mode as provided in Article III and effective as of the Interest Adjustment Date for which such rate was determined and effective until (and excluding) the next Interest Adjustment Date or if such Mode includes only one Interest Adjustment Date then the day before such Mode is changed;

(b) calculated at the Day Count Convention for such Mode; and

(c) payable on the Interest Payment Date for such Mode to the Modal Holder of such Variable Rate Security as of the Record Date for such Mode provided that:

(1) if any such Interest Payment Date occurs after the stated maturity of the related Modal Security then interest shall be paid on such stated maturity; and

(2) if interest on any Modal Security shall be in default, then such interest shall be payable on the Special Interest Payment Date, if any, established for such Security.

Section 2.04. Payment of Interest.

(a) **Modal Fixed Rate Securities.** Interest on Modal Fixed Rate Securities shall be paid by the Transfer Agent as if such Securities were Fixed Rate Securities.

(b) **Variable Rate Securities.** Interest due on Variable Rate Securities on an Interest Payment Date shall be paid by the Tender Agent as follows:

(1) Modal Holders, as of the applicable Record Date, of Short-Term Securities shall be paid by wire transfer of immediately available funds to the account specified by each such Modal Holder in a writing delivered to the Tender Agent. Such writing shall remain in effect until revoked or revised by such Modal Holder in a writing delivered to the Tender Agent.

(2) Modal Holders, as of the applicable Record Date, of Term Rate Securities shall be paid by check mailed by the Tender Agent to each such Modal Holder at its address appearing in the Registry as of such Record Date except that any Modal Holder of \$1,000,000 or more in aggregate principal amount of Modal Fixed Rate Securities shall be paid in the same manner as Modal Holders of Short-Term Securities upon such Modal Holder delivering the writing required by paragraph (1), above.

(c) **Defaulted Interest.**

(1) If interest on any Variable Rate Security payable on an Interest Payment Date is not duly paid or provided for then such interest ("**Defaulted Interest**") shall cease to be payable to the Person in whose name such Variable Rate Security (or a Predecessor Variable Rate Security) was registered on the Record Date for such Interest Payment Date.

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(2) Defaulted Interest shall be payable by the Transfer Agent to the Person in whose name such Variable Rate Security is registered on a Special Record Date established by the Transfer Agent.

(3) The Transfer Agent shall establish a Special Record Date of approximately the same number of days before the day on which the Transfer Agent proposes to pay such Defaulted Interest as the number of day by which the Record Date preceded the Interest Payment Date on which such Defaulted Interest would have been payable had not the default occurred.

(4) "*Predecessor Variable Rate Security*" means, with respect to any Variable Rate Security, every previous Variable Rate Security evidencing all or a portion of the same as that evidenced by such Variable Rate Security; and, for this purpose, every Variable Rate Security authenticated and delivered in lieu of any lost, destroyed or stolen Variable Rate Security shall be deemed to evidence the same debt as such lost, destroyed or stolen Variable Rate Security.

ARTICLE III INTEREST RATE DETERMINATIONS

Section 3.01. Manner of Determining Interest Rates.

(a) The interest rate for all Modal Securities in each Tranche, commencing with the first Rate Determination Date after the Closing Date, shall be determined by the Remarketing Agent on each Rate Determination Date as provided in this Article.

(b) If any interest rate determined as provided in this Article for any Tranche exceeds the Modal Maximum Rate, then the interest rate for such Tranche shall be the Modal Maximum Rate.

(c) The determination of any interest rate pursuant to this Article shall be conclusive.

Section 3.02. Interest Rate Determination for Flexible Rate Mode.

(a) Flexible Rate Securities shall bear interest at rates derived by determining the Period that, in the judgment of the Remarketing Agent, would result in the lowest interest cost for such Flexible Rate Securities as provided in this Section.

(b) On each Rate Determination Date for Flexible Rate Securities, the Remarketing Agent shall determine the Period that results in selling such Flexible Rate Securities at par in the secondary market at such rate for such Period that in the judgment of the Remarketing Agent would result in the lowest interest cost for the City under prevailing market conditions on such Rate Determination Date, subject to the following conditions and limitations.

(1) If the Remarketing Agent determines that current or anticipated future market conditions or anticipated future events are such that a different Period would result in a lower interest cost on such Flexible Rate Securities, then the Remarketing Agent shall select such Period that in the judgment of the Remarketing Agent would result in such lowest interest cost for the City.

(2) The Remarketing Agent is subject to the limitations contained in Section 4.04 in establishing any Flexible Rate Period.

(c) On or after 4:00 p.m. on the Business Day immediately before each Rate Determination Date for a Flexible Rate Security, any Holder of such Security may telephone the Remarketing Agent and receive notice of the anticipated next Period or Periods and the anticipated Flexible Rate for each such Period.

(d) By 12:30 p.m. on each Rate Determination Date for each Flexible Rate Security, the Remarketing Agent shall determine the Flexible Rate for the Period then selected for such Security and shall give notice by Electronic Means to the Tender Agent of the name of the new Holder, the Period, the Purchase Date and the Flexible Rate.

(e) The Remarketing Agent shall promptly notify the Finance Director and the Transfer Agent of each interest rate determination made under this Section.

(f) Unless the Remarketing Agent has obtained the prior written consent of the Bond Insurer, no Period during the Flexible Rate Mode shall be less than one week.

Section 3.03. Interest Rate Determinations for All Other Modes.

(a) The interest rate for each Tranche of Modal Securities other than Flexible Rate Securities shall be determined by the Remarketing Agent on the Rate Determination Date for such Mode as the interest rate that in the judgment of the Remarketing Agent would allow such Modal Securities to be sold at par plus interest accrued to the purchase date, under prevailing market conditions on such Rate Determination Date.

(1) During the Daily Mode, the Remarketing Agent shall establish the Daily Rate by 9:30 a.m. on each Rate Determination Date. The Daily Rate for any day during the Daily Mode which is not a Modal Business Day shall be the Daily Rate established on the immediately preceding Rate Determination Date.

(2) During the Weekly Mode, the Remarketing Agent shall establish the Weekly Rate by 5:00 p.m. on each Rate Determination Date.

(3) The Term Rate for any Term Rate Security shall be determined by the Remarketing Agent not later than 4:00 p.m. on the Rate Determination Date for such Term Rate Security.

(4) The Remarketing Agent shall determine the Modal Fixed Rate for each Modal Fixed Rate Security not later than 4:00 p.m. on the Rate Determination Date for such Modal Fixed Rate Security.

(b) Upon making each interest rate determination pursuant to this Section, the Remarketing Agent shall give immediate notice by Electronic Means to the Finance Director, the Transfer Agent and the Tender Agent of such interest rate determination.

Section 3.04. Failure of Interest Rate Determination.

(a) Each of the following constitutes a "*Rate Suspension Event*":

(1) the Remarketing Agent fails or is unable to determine the interest rate or Period for any Modal Security; or

(2) a court of law of competent jurisdiction shall hold either of the following to be unenforceable or shall stay either:

(i) the method by which the Remarketing Agent determines the interest rate with respect to a Modal Security or

(ii) the selection by the Finance Director of the Term Rate Periods.

(b) The Remarketing Agent shall notify every other Notice Party of the occurrence of any Rate Suspension Event.

(c) A Rate Suspension Event shall continue until the Remarketing Agent (or the Finance Director if applicable) again makes such determinations. In the case of clause (ii) above, the Remarketing Agent (or the Finance Director, if applicable) shall again make such determination at such time as there is delivered to the Remarketing Agent and the Finance Director an opinion of Bond Counsel to the effect that there are no longer any legal prohibitions against such determinations.

(d) The following rates are applicable upon the occurrence and during the continuance of a Rate Suspension Event:

(1) for a Daily Rate Security, the Alternative Weekly Rate as of each Weekly Rate Determination Date;

(2) for a Weekly Rate Security, the Alternative Weekly Rate as of each Weekly Rate Determination Date; and

(3) for a Flexible Rate Security, the Alternative Weekly Rate in effect on the Business Day that begins each Flexible Rate Period. Each such Flexible Rate Period shall be of the duration specified in Section 4.03;

(4) for a Term Rate Security, the Alternative Term Rate for the Term Rate Period for the Term Rate Period extended as provided in Section 4.05.

ARTICLE IV MODES AND PERIODS

Section 4.01. Modes.

(a) *Modes Which Can or Cannot be Changed.*

(1) The Mode of a Modal Fixed Rate Security cannot be changed.

(2) The Mode of any Variable Rate Security, including a Variable Rate Security that has been defeased, may be changed subject to the following limitations:

(i) the Mode of a Variable Rate Security may not be changed to the Flexible Rate Mode unless the Mode of all outstanding Variable Rate Securities is changed to the Flexible Rate Mode on the same Mode Change Date and

(ii) the Mode of a Flexible Rate Security may not be changed unless the Mode of all outstanding Flexible Rate Securities is changed on the same Mode Change Date.

(3) Although the Mode of a Term Rate Security or a Flexible Rate Security may be changed, it may be changed only at the end of a Period.

(b) *When Change Permitted.*

(1) The Mode of a Daily Rate Security or a Weekly Rate Security may be changed on any Modal Business Day.

(2) The Mode of a Flexible Rate Security may be changed only on the last day of the Flexible Rate Period.

(3) The Mode of a Term Rate Security may be changed only on the last day of the Term Rate Period.

(c) *How Changed.*

(1) The Finance Director may change a Variable Rate Security from one Mode to another pursuant to a Mode Change Notice, but such change shall become effective only as provided in Section 4.08.

(2) Once the Mode of a Variable Rate Security is changed to the Modal Fixed Rate or an Auction Rate Security, such Security is no longer a Variable Rate Security for purposes of this Agreement.

(d) *Period Changes Not Mode Changes.* Once a Term Rate Mode or a Flexible Rate becomes effective, giving effect to one or more successive Periods for such Mode is not a Mode change.

Section 4.02. Duration of Modes.

Once a Mode is in effect for a Modal Security, that Mode continues in effect until another Mode takes effect in accordance with in Section 4.08.

Section 4.03. Length of Flexible Rate Periods.

(a) The length of each Flexible Rate Period is determined by the Remarketing Agent in connection with the marketing or remarketing of the respective Flexible Rate Security as provided in Section 3.02.

(b) Unless the Mode is changed, a new Flexible Rate Period shall commence on the last day of the current Flexible Rate Period.

(c) If a Rate Suspension Event prevents the Remarketing Agent from determining a Flexible Rate Period for any Flexible Rate Security, then the first Flexible Rate Period shall begin on the day the Remarketing Agent would have otherwise determined such Flexible Rate Period and shall end on the immediately following Interest Adjustment Date for Weekly Rate Securities and each Flexible Rate Mode Period thereafter shall begin and end on successive Interest Adjustment Dates for Weekly Rate Securities until the Rate Suspension Event is no longer continuing.

Section 4.04. Limitations on Length of Flexible Rate Periods.

(a) The Remarketing Agent will comply with the following limitations in establishing the Flexible Rate Period for each Flexible Rate Security.

- (1) The Period shall begin and end on Modal Business Days.
- (2) The Period shall not be longer than the least of:
 - (i) Maximum Permitted Period, as defined in subsection (b);
 - (ii) 365 calendar days;
 - (iii) the stated maturity of the Flexible Rate Security; and
 - (iv) unless such Flexible Rate Security is to be an Excluded Security, the last Modal Business Day occurring not less than five days before the Expiry Date for the then current Financial Facility or Facilities.

(b) "Maximum Permitted Period" means the number of days equal to

$$\frac{\text{MMR} \times \text{Days}}{\text{Rate}}$$

Where:

MMR = The Modal Maximum Rate, which on the date of this Agreement is 12%

Days = The number of days on which was based the interest component of the Liquidity Facility for Variable Rate Securities, which for the Liquidity Facility in effect on the Closing Date is 34.

Rate = The rate for the new Flexible Rate Period.

Section 4.05. Length of Term Rate Periods.

(a) The length of each Term Rate Period shall be determined by the Finance Director in his/her notice to the Remarketing Agent.

(1) The length of the initial Term Rate Period shall be set forth in the Mode Change Notice electing a change to the Term Rate Mode.

(2) The length of each successive Term Rate Period shall be set forth in a notice of the Finance Director delivered to the Remarketing Agent, and such notice shall be delivered not less than five Modal Business Days before the last day of the current Term Rate Period. Section 4.07 provides for the action to be taken if Finance Director does not give such notice.

(3) The Finance Director shall promptly provide the Transfer Agent and the Tender Agent with a copy of each notice setting the length of a Term Rate Period.

(b) Unless the Mode is changed, a new Term Rate Period shall commence on the last day of the current Term Rate Period.

(c) If a Rate Suspension Event prevents the Remarketing Agent from giving effect to a successive Term Rate Period elected by the Finance Director then the Finance Director may elect any other Mode not subject to such Rate Suspension Event.

(1) If the Finance Director elects to make a Mode change, notice of the election shall be given in accordance with Section 4.10 in time to effect the Mode change on the last day of the then current Term Rate Period; provided that, any Notice Party may waive any notice requirements with respect to notices to be given to it. The conditions to a Mode change contained in Section 4.09 are applicable.

(2) If the Finance Director does not elect to make a Mode change or cannot meet the requirements of paragraph (1), above, then the current Term Rate Period of such affected Variable Rate Security shall be extended for successive Interest Payment Dates until the Rate Suspension Event is no longer continuing.

Section 4.06. Limitations on Length of a Term Rate Period.

In determining the length of a Term Rate Period the Finance Director is subject to the following limitations. If a Term Rate Period of the minimum length cannot meet the limitations set forth below then the Finance Director cannot elect a Term Rate Period.

(a) A Term Rate Period must include at least two Interest Payment Dates, the first of which must be at least 30 days after the Mode Change Date.

(b) The length of every Term Rate Period is subject to the following rules regarding Rating Confirmations.

(1) No Term Rate Period may be longer than the immediately preceding Term Rate Period without a Rating Confirmation in respect of the new Term Rate Period.

(2) If there is no immediately preceding Term Rate Period then a Rating Confirmation shall be obtained and the length of the new Term Rate Period cannot exceed the length permitted by such Rating Confirmation.

(c) A Term Rate Period must begin on a Modal Business Day and must end on an Interest Payment Date that is either a Modal Business Day or the Interest Payment Date that is the stated maturity date of the Modal Security. The second Interest Payment Date in a Term Rate Period may be the Interest Payment Date on which the Term Rate Period ends.

(d) No Term Rate Period may extend beyond the earlier of:

- (1) the stated maturity of the Term Rate Security and
- (2) unless such Term Rate Security is to be an Excluded Security, the Expiry Date for the required Financial Facility or Facilities.

Section 4.07. Finance Director Fails to Elect New Term Rate Period.

If the Finance Director has not provided notice in accordance with Section 4.05 by the fifth Modal Business Day before the end of the current Term Rate Period, then the Term Rate Period and the Term Rate shall be determined as if a Rate Suspension Event had occurred.

Section 4.08. Effectiveness of Modes.

(a) *Conditions to Effectiveness.*

- (1) The Initial Mode is effective on and as of the Closing Date without any further act.
- (2) Other than the Initial Mode, no Mode shall become effective unless the conditions precedent to the change to such Mode are met on the Mode Change Date.
- (3) The Mode change from a Variable Rate Mode to an Auction Rate Mode shall not become effective unless the conditions established by the applicable section of the Auction Rate Mode Supplement are met.
- (4) Any Mode may become effective for all or some Modal Securities if, upon giving effect to the Mode change, the denominations of all Modal Securities are Authorized Denominations for the respective Modes.

(b) *When Effective.* A change in Mode becomes effective only on a Modal Business Day on which a change is permitted under Section 4.01 for the particular Mode then in effect and takes effect on the Modal Business Day when changed.

Section 4.09. Conditions Precedent to Mode Change.

(a) *All Mode Changes.* It is a condition precedent to a Mode change that there shall be delivered to the Tender Agent, and the Tender Agent shall hold on the Mode Change Date:

- (1) a Favorable Bond Counsel's Opinion, addressed to the Notice Parties;
- (2) either moneys sufficient to pay the Purchase Price of all affected Modal Securities plus interest accrued to the Mode Change Date, so as to be available for such

payment or a Liquidity Facility with sufficient capacity to permit such amount to be drawn thereunder and under which no condition exists that would prohibit such draw;

(3) a Rating Confirmation for all Modal Securities not affected by the Mode change if:

(i) the Mode change involves less than all outstanding Modal Securities and

(ii) the Modal Securities affected by the Mode change will become Excluded Securities.

(b) **Change to the Auction Rate Mode.** It is a condition precedent to a Mode change to the Auction Rate Mode that there shall be delivered to the Tender Agent, and the Tender Agent shall hold on the Mode Change Date evidence that:

(i) the Finance Director shall have approved and executed an Auction Rate Supplement, as an annex to the Sale Order, in substantially the same form and have substantially the same provisions as the Auction Rate Supplement entered into in connection with the City's Sewage Disposal System Revenue Bonds, Series 2001(D-1) and (D-2);

(ii) the conditions established by the applicable section of the Auction Rate Mode Supplement must be satisfied and

(iii) the Provider of the Credit Enhancement has consented to the Mode change.

(c) **Change Permitted by Section 2.02.** It is a condition precedent to a Mode change including any change permitted by Section 2.02 that there shall be delivered to the Tender Agent, and the Tender Agent shall hold on the Mode Change Date:

(i) evidence of the satisfaction of the requirements of Section 2.02(b) and

(ii) a Favorable Bond Counsel's Opinion with respect to such changes.

(d) **If Subject of a Financial Facility.** It is a condition precedent to a Mode change of any Variable Rate Security not an Excluded Security, that there shall be delivered to the Tender Agent, and the Tender Agent shall hold on the Mode Change Date:

(1) every required Conforming Financial Facility for such Variable Rate Securities determined as if the Mode change to be made had become effective; and

(2) a Rating Confirmation if the amount of interest coverage required by Section 9.02 to be provided by any required Financial Facility increases from the amount required for the Mode from which the change is to be made.